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January 12, 2015

BY ECF AND EMAIL

Hon. Richard J. Sullivan
United States District Judge
United States District Court
for the Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Green v. State of NY*, 14-cv-02073-RJS-FM

Your Honor:

By Order dated August 27, 2014, the above-referenced case was assigned to Chief United States Magistrate Judge Frank Maas. Respondent filed a response to the petition for a writ of habeas corpus on December 19, 2014 (Dkt. No. 12-13). Petitioner's reply is to be filed by February 13, 2015. This letter is in response to petitioner Edward Green's letter of January 6, 2015 (Dkt. No. 16), in which he seeks an extension of time to file a reply and for leave to expand the record. Although this case was referred to Chief United States Magistrate Judge Maas, petitioner addressed his letter to Your Honor.

To the extent that petitioner seeks a ninety-day extension of time to file a reply, we have no objection to any extension of time that the Court is inclined to provide. To extent that petitioner seeks leave to "expand the record" to provide the Court with an "exhibit from the state court record" that he claims was not included in the 379-page record that respondent filed with the Court (Dkt. No 13), we oppose petitioner's application. Petitioner neither describes the "proposed exhibit," nor provides a copy of it with his letter. Accordingly, it is unclear what this exhibit is and whether the state court had an opportunity to review it. *See Cullen v.*

Pinholster, 131 S. Ct. 1388, 1398 ("review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits"); *Richard v. Girdich*, No. 03-CV-0920, 2007 U.S. Dist. LEXIS 7305, at *8-9 (N.D.N.Y. Feb. 1, 2007) (motion to expand the record is denied where petitioner "did not give the state court opportunity to review the documents and has not demonstrated how these documents are related to a determination of [his] claims"), *reconsid. den.*, 2007 U.S. Dist. LEXIS 32311 (N.D.N.Y. May 2, 2007). For this reason, respondent opposes petitioner's motion to expand the record.

Respectfully submitted,

/s Thomas B. Litsky

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cc: Hon. Frank Maas (Courtesy Copy by FAX)
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Edward Green
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Eastern New York Correctional Facility
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DECLARATION OF SERVICE

THOMAS B. LITSKY, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: that on January 12, 2015, he served the annexed letter, and any unpublished case cited therein, by mailing copies to petitioner at the following address:

Edward Green
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P.O. Box 338
Napanoch, NY 12458.

A courtesy copy was emailed to the Chambers of Hon. Richard J. Sullivan, U.S.D.J., and faxed to the Chambers of Hon. Frank Maas, Ch. United States Magistrate Judge

Executed on January 12, 2015

/s/ Thomas B. Litsky

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